

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Crim. No. 96-81(1) (PAM)

Plaintiff,

v.

ORDER

Paul W. Moore,

Defendant.

This matter is before the Court on Defendant's Motion to Modify or Reduce Term of Imprisonment Pursuant to 18 U.S.C. § 3582(c)(2). That section states that a court may reduce an imprisonment term when the United States Sentencing Commission subsequently lowers the applicable sentencing range pursuant to 28 U.S.C. § 994(o). In 2005, Defendant previously moved for relief under § 3582(c)(2). At that time, the Court construed the motion as one for habeas relief under 28 U.S.C. § 2255, but further concluded that even if § 3582(c)(2) applied Defendant had failed to identify any Sentencing Commission amendment under § 994(o) that would reduce his imprisonment term. (See Orders of May 4, 2005 and June 6, 2005 (Docket Nos. 197, 200), aff'd, 177 Fed. Appx. 511 (8th Cir. 2006 (per curiam).)

By this Motion, Defendant identifies Sentencing Guidelines Amendment 599 as providing grounds for a sentence reduction. Amendment 599, as adopted after Defendant's 1997 conviction, guards against counting conduct twice for sentencing purposes when a defendant is convicted for using or possessing a firearm during a violent or drug-trafficking

crime, in violation of 18 U.S.C. § 924(c). United States v. Friend, 303 F.3d 921, 921 (8th Cir. 2002). Amendment 599 applies only to 18 U.S.C. § 924(c) convictions. Friend, 303 F.3d at 921 (quoting U.S.S.G. Manual, Supp. to App. C. at 71 (2001)). Defendant was not convicted of violating § 924(c). A jury convicted Defendant of narcotics violations under 21 U.S.C. §§ 841 and 846 and of possessing a firearm as a felon in violation of 18 U.S.C. § 922(g)(1). Defendant's general attack on his two-level adjustment for possession of a firearm is particularly without merit because that conviction was not figured into the overall offense level.

Accordingly, based on all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that Defendant's Motion to Modify or Reduce Term of Imprisonment Pursuant to 18 U.S.C. § 3582(c)(2) (Docket No. 204) is **DENIED**.

Dated: August 21, 2007

s/ Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge